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May 6, 2019

Regional Freedom of Information Officer
U.S. EPA, Region 5
77 West Jackson Boulevard (MI-9J)
Chicago, IL 60604-3590
(312) 886-6686

Re: Freedom of Information Act ("FOIA") Request for Records Related to Keystone Steel
and Wire Company: (US EPA Id: ILD 000 714 881)

Dear Ms. Wells:

On behalf of Keystone Steel and Wire Company ("Keystone"),¹ and pursuant to the Freedom of Information Act ("FOIA"), I hereby request all records relating to the Administrative Order on Consent ("AOC") executed by the U.S. Environmental Protection Agency ("EPA" or "the Agency") and Keystone on December 19, 2000 (EPA Docket No. R8H-5-01-001). I am making this request on the recommendation of Ms. Diane Sharrow,² who is an EPA Region 5 Senior Inspector/Enforcement Officer in the Land and Chemicals Division.

More specifically, I hereby request any and all records³ and communications⁴ regarding:

¹ Keystone's EPA facility ID is ILD 000 714 881 and it is located at 7000 S.W. Adams Street, Peoria, Illinois, 62641 – 0002. Some records may also refer to Keystone's parent company, Keystone Consolidated Industries, Inc.

² Ms. Sharrow has represented to me that she holds some, but not all, of these records. She also believes that Tod Gmitro may have records responsive to this request.

³ "Records" includes documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images, calendar entries, and other data or data compilations, stored in any medium from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of this term.

⁴ "Communications" includes every manner or means of disclosure, transfer, transmission, or exchange of information, whether person-to-person, in a group, by telephone, by letter, facsimile, electronic or computer mail (whether sent to or received from a professional or personal account), voicemail, telex or telecopy, or by any other process, electric, electronic, or otherwise. Communications also includes scheduling records and meeting minutes pertaining to a meeting.

KELLEY DRYE & WARREN LLP

May 6, 2019
Page Two

1. Inspections, investigations, inquiries, compliance determinations or reports, or enforcement actions between September 10, 1992 and the date of the AOC (December 19, 2000) regarding Keystone's generation and or management of solid waste, hazardous waste, used oil, cooling water, or wastewater. These records and communications should include, but are not limited to, matters relating to:
 - a. Resource Conservation and Recovery Act ("RCRA") Facility Assessment Reports;
 - b. a 1993 Consent Order between Keystone and the State of Illinois;
 - c. a site visit and/or inspection by EPA in 1999;
 - d. a unit or units referred to as "oil skimmer basin," "oil skimming basin," "oil skimmer pond," "northern cooling pond," "closed-loop cooling pond," or "closed-loop cooling pond system."
2. Inspections, investigations, inquiries, compliance determinations, and reports from the date of the AOC (December 19, 2000, through December 21, 2016) referencing the AOC (EPA Docket No. R8H-5-01-001) or otherwise generated, received, compiled, reviewed, or issued pursuant to the AOC. These records should include, but are not limited to, matters relating to:
 - a. the Current Conditions Report dated February 2001;
 - b. the Environmental Indicators Assessment Report dated January 2002;
 - c. solid waste, hazardous waste, used oil, cooling water, or wastewater;

Documents should be produced in the format in which they are maintained. Documents maintained in electronic format should be produced electronically, with all metadata intact. If a document can be wholly scanned into an electronic copy, please do so in lieu of producing a physical copy.

If the records requested herein are located in any department, bureau, or office other than this Office, please advise me thereof. If documents are denied in part, please specify the exemptions claimed for each page or passage. In addition, for documents withheld in their entirety, please state the date of and the number of pages in each document. To the extent that a privilege or justification for a redaction is claimed on a given document, please provide a redacted copy of the document. Additionally, please advise me of any destruction of records and include the date of and authority for such destruction and please place missing documents on "special locate" and notify me that you have done so.

KELLEY DRYE & WARREN LLP

May 6, 2019
Page Three

If for any reason any portion of this request is denied, please inform me of the reasons for the denial in writing and provide the name, address, and email address of the person or body to whom an appeal should be directed. In connection with this request:

1. The requestor is: Wayne D'Angelo, on behalf of the Keystone Steel and Wire Company.
2. The requestor agrees to pay all reasonable fees and costs necessary to fulfill this request, provided that said fees and costs do not exceed \$500.00. In the event that fees and costs exceed this limit, please notify us of the estimated cost, which will likely be approved, if reasonable. In addition, please let us know if this request can be fulfilled through less formal means.
3. If some or all of the files exist in hard copy format, and/or are too voluminous to review and duplicate, please notify the requestor. We are willing to come to EPA's Region 5 office to review documents in person.

Please contact me at (202) 342-8525 as soon as practicable to discuss the timing of EPA's response to this request, as this request is time-sensitive. If you have any questions regarding any portion of this request, please do not hesitate to contact me. Thank you in advance for your assistance in this matter.

Best regards,



Wayne J. D'Angelo

cc: Diane Sharrow
Andre Daugavietis

Inc: December 19, 2000 Administrative Order on Consent

11/14/00
R. Perry
Keystone

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Keystone Consolidated
Industries, Inc.,
7000 S.W. Adams Street
Peoria, Illinois 61641-0002

EPA ID#: ILD 000 714 881 .

RESPONDENT

ADMINISTRATIVE ORDER ON CONSENT

U.S. EPA Docket No: **R8H-5-01-001**

Proceeding under Section 3008(h)
of the Resource Conservation and
Recovery Act, as amended,
42 U.S.C. §6928(h).

I. JURISDICTION

1. The Chief of the Enforcement and Compliance Assurance Branch, in the Waste, Pesticides and Toxics Division of U.S. EPA Region 5, issues this order under subsections 3008(a) and (h) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), (h). The Chief possesses this authority under a series of delegations originating with the Administrator of U.S. EPA.
2. The Chief issues this Order to Keystone Consolidated Industries, Inc. ("Keystone"), a Delaware corporation, who owns and operates an iron and steel products manufacturing facility located at 7000 S.W. Adams Street, Peoria, Illinois. Keystone's Peoria facility is adjacent to the west bank of the Illinois River.
3. Keystone acknowledges U.S. EPA's authority to issue this Order and consents to its terms. Keystone agrees not to contest any action by U.S. EPA to compel compliance with this order or to impose sanctions for violations of the Order.

II. DEFINITIONS

4. This Order incorporates the definitions found in the RCRA statute, 42 U.S.C. §§ 6901-6992k, and regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

5. This Order applies to U.S. EPA and Keystone. The Order further applies to persons acting on behalf of Keystone or to a corporate successor to Keystone. Keystone remains liable for any failure to carry out all activities required by this Order, regardless of Keystone's use of employees, agents, contractors, or consultants to perform its obligations.

6. Should Keystone transfer any property interest in its Peoria facility, Keystone's responsibilities under this Order will remain unaffected. In the event of a transfer of a whole or partial interest in its Peoria facility, Keystone will furnish the recipient of the property interest with notice of this Order. Keystone must also furnish the federal project manager with notice within five days of the transfer. In the notice of transfer to the federal project manager, Keystone will certify that the transfer will not affect the institutional controls in place under this Order and the RCRA statute, 42 U.S.C. §§ 6901-6992k. The requirements of this paragraph are effective for the duration of this Order.

IV. DETERMINATIONS OF FACT AND LAW

7. Keystone, a corporation, is a "person" within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
8. Because Keystone has owned and operated the Peoria manufacturing plant since at least 1955, Keystone is the owner or operator of a facility that has operated under interim status subject to section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
9. Certain hazardous wastes and hazardous constituents, as defined in sections 1004(5), and 3001 of RCRA and 40 C.F.R. part 261, are present at Keystone's Peoria facility.
10. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Keystone's Peoria facility.
11. The actions required by this Order are necessary to protect human health and the environment.
12. Keystone represents that it has the technical and financial ability to proceed with corrective action at the facility under this Order.

V. PROJECT MANAGER

13. U.S. EPA and Keystone will each designate a Project Manager and will notify each other in writing of the Project Manager each has selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties will provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

14. Pursuant to section 3008(h) of RCRA, and with Keystone's acquiescence, U.S. EPA orders Keystone to perform the following work in a manner consistent with this Order. Keystone will ensure that all work undertaken pursuant to this Order will be performed in compliance with RCRA and all other laws and regulations, and consistent with U.S. EPA guidance documents. This guidance includes the "Documentation of Environmental Indicator Determination Guidance," portions of the "Model Scopes of Work for RCRA Corrective Action" and of U.S. EPA's risk assessment guidance.
15. Keystone must determine the nature and extent of releases of hazardous waste and hazardous constituents at or from the following five Solid Waste Management Units (SWMU) at the facility: (1) the sheen pond, (2) the f-pond, (3) the tail track landfill, (4) the pond east of the tail track landfill and (5) the cooling pond oil skimming basin. Keystone must do at least the following:
 - a. Provide to U.S. EPA, within 60 days after the effective date of this Order, a brief current conditions report which includes any recent sampling data from the facility, a summary of the historic operations and physical setting of the facility. The report will describe, at a minimum, conditions at all locations specified in the report "RCRA Facility Assessment Report," including the October 27, 1997, visual site inspection and the December 8 and 9, 1987, sampling activities. This report must also include any other past or present locations at the facility for which Keystone knows of past treatment, storage or disposal of hazardous waste or hazardous constituents.
 - b. Identify the nature and extent of any releases of hazardous waste or hazardous constituents from those areas identified above and any other past or present locations at the facility where past waste treatment, storage or disposal may pose an unacceptable risk to human health or the environment. Keystone must provide a report to U.S. EPA summarizing the results of this investigation. The report must also describe the nature and extent of any releases of hazardous waste or hazardous constituents at or from the facility which do not pose an unacceptable risk to human health or the environment, and provide the basis for this conclusion, including an evaluation of the risks. The report may be prepared in phases to provide timely support for the demonstrations described in Section VI.16, below, and for the determinations and proposal described in Section VI.17, below.

- c. Keystone may proceed with remedial actions to limit site investigation or risk assessment activities to complete the work required by Sections VI.16 and VI.17 below.
16. By 1/30/2002, Keystone must submit an environmental indicators report and perform any other necessary activities, consistent with this Section, that:
- a. Keystone has contained all current human exposures to contamination at or from the facility, including from all Solid Waste Management Units, Hazardous Waste Management Units and Areas of Concern at or from the Facility. That is, for all media known or suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors, significant or unacceptable exposures do not exist.
 - b. Keystone has stabilized the migration of contaminated groundwater at or from the facility. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination determined by monitoring locations designated at the time of the demonstration. In addition, stabilization also means that any discharge of groundwater to surface water is either insignificant or shown to be currently acceptable according to an appropriate interim assessment. Keystone must collect and maintain data as necessary to verify that the migration of contaminated groundwater is stabilized.
17. To prepare for and provide the demonstrations required by Sections VI.16.a and VI.16.b., above, Keystone must:
- a. Determine appropriate risk screening criteria under current use scenarios and justify use of these criteria.
 - b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - c. Control any unacceptable current human exposures that are identified. This may include performing any corrective actions or other response measures necessary to control current human exposures to contamination to within acceptable risk levels.
 - d. Stabilize the migration of contaminated groundwater. This may include implementing any corrective measures necessary to stabilize the migration of contaminated groundwater.

- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
 - f. Prepare a report, either prior to or as part of the environmental indicators report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and confirmatory sampling results.
18. By January 30, 2003, Keystone must propose to U.S. EPA any final corrective measures for the five solid waste management units identified in paragraph 15 (the sheen pond, the f-pond, the tail track landfill, the pond east of the tail track landfill and the cooling pond oil skimming basin) that are necessary to protect human health and the environment. This proposal must describe all corrective measures implemented at the five units since the effective date of this Order. It must also describe all other final corrective measures for the five units evaluated by Keystone, explain why Keystone selected the final proposed corrective measures, and provide cost estimates for the final corrective measures. The proposal must also include a detailed schedule to construct and implement the final corrective measures for the five units, and to submit a final remedy construction completion report. This schedule must provide that Keystone will complete as much of the initial construction work for the five units as practicable within one year after U.S. EPA selects the final corrective measures and that Keystone will complete all final corrective measures within a reasonable period to protect human health and the environment.
- a. In developing its proposal, Keystone must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.
 - b. U.S. EPA may request supplemental information from Keystone if U.S. EPA determines that the proposal and supporting information do not provide an adequate basis for selection of final corrective measures to protect human health and the environment from the release of hazardous waste or hazardous constituents at or from the five solid waste management units. Keystone must provide such supplemental information in a timely manner as directed in writing by U.S. EPA.
 - c. U.S. EPA must provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, U.S. EPA

will select the final corrective measures Keystone must perform for the five units and will state its decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

- d. Upon notification by U.S. EPA, Keystone must implement the final corrective measures for the five units selected in U.S. EPA's Final Decision and in accordance with the schedule therein.

19. Reporting and other requirements:

- a. Keystone must establish a publicly accessible repository for information regarding site activities and conduct public outreach activities.
- b. Keystone must provide quarterly progress reports to U.S. EPA by the 15th day of each month following a calendar quarter detailing work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order.
- d. Keystone must provide a final remedy construction completion report documenting all work that Keystone has performed pursuant to the schedule in U.S. EPA's Final Decision selecting the final corrective measures.
- e. If ongoing monitoring or operation and maintenance is required after construction of the selected final corrective measures, Keystone must include an operations and maintenance plan in the final remedy construction completion report. Keystone will revise and resubmit the report to respond to U.S. EPA's written comments, if any, by the due dates specified by U.S. EPA. Upon U.S. EPA's written approval, Keystone must implement the approved operation and maintenance plan according to the schedule and provisions in the report.
- f. Any risk assessments conducted by Keystone must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. Keystone must conduct its risk assessments according to the Risk Assessment Guidance for Superfund ("RAGS") or other appropriate U.S. EPA guidance. Keystone must use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from federal maximum contaminant levels, U.S. EPA Region 9 Preliminary

Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, and U.S. EPA Region 3 Risk Based Concentration Table, or RAGS.

- g. Keystone must perform all sampling and analysis under this Order in conformity with the Region 5 RCRA Quality Assurance Project Plan (QAPP) Policy (April 1998). This sampling and analysis must be sufficient to identify and characterize the nature and extent of all releases described by this Order. U.S. EPA may audit laboratories selected by Keystone or require Keystone to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. Keystone must notify U.S. EPA in writing at least 14 days prior to beginning each separate phase of field work performed under this Order. At U.S. EPA's request, Keystone will provide or allow U.S. EPA and its representative to take split or duplicate samples of all samples collected by Keystone pursuant to this Order.
20. The project managers may agree in writing to extend any deadline contained in this Section. The Chief, Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division, must approve any extension of more than three months.

VII. ACCESS

21. Upon reasonable notice, and at reasonable times, U.S. EPA and its representatives may enter and freely move about the facility pursuant to this Order for the purposes of: a) interviewing facility personnel and contractors; b) reviewing the Keystone's progress in carrying out the terms of this Order; c) conducting any tests, sampling, or monitoring U.S. EPA deems necessary; d) using a camera, sound recording, or other documentary type equipment; e) and verifying the reports and data submitted to U.S. EPA by Keystone. Keystone will permit such persons to inspect and copy all non-privileged records, files, photographs, documents, including all sampling and monitoring data, pertaining to work undertaken under this Order and that are within the possession or under the control of Keystone or its contractors or consultants.
22. To the extent that Keystone must perform work under this Order beyond the facility property boundary, Keystone will use its best efforts to obtain access agreements necessary to complete work required by this Order from the present owners of the property within 30 days of the date the need for access becomes known to Keystone. Any access agreement will provide for access by U.S. EPA and its representatives. Keystone will insure that U.S. EPA's Project Manager has a copy of any access agreement(s). If agreements for access are not obtained within 30 days, Keystone will notify U.S.

EPA in writing within 14 days thereafter of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist Keystone in obtaining access.

23. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry pursuant to applicable law, including RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675.

VIII. RECORD PRESERVATION

24. Keystone will retain for at least six years after termination of the entire Order, all data and all final records and documents now in its possession or control or which come into its possession or control which relate in any way to this Order. Keystone will notify U.S. EPA in writing 90 days prior to destroying any such records, and provide U.S. EPA with the opportunity to take possession of any such non-privileged records. The written notification will reference the effective date, caption, and docket number of this Order and will be addressed to:

Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Keystone will also promptly provide a copy of any such notification to U.S. EPA's Project Manager.

25. Keystone further agrees that within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Keystone will enter into an agreement with the agents requiring the agents to provide Keystone a copy of all data and final non-privileged documents produced pursuant to this Order.
26. Keystone will not assert any privilege claim concerning any data developed to prepare any reports or conduct any investigations or other actions required by this Order.

IX. STIPULATED PENALTIES

27. Keystone will be subject to the following stipulated penalties:
- a. For failure to submit quarterly progress reports by the dates scheduled in Section VI.18: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.

- b. For failure to adequately demonstrate that current human exposures are under control by 4/30/2002: \$3,000 per day.
 - c. For failure to adequately demonstrate that groundwater migration is stabilized by 4/30/2002: \$3,000 per day.
 - d. For failure to submit the Final Corrective Measures Proposal in Section VI.17 by 7/30/2003: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
 - e. For failure to initiate work in accordance with the approved schedule, the selected final corrective measures as described in Section VI.17: \$3,000 per day for the first 14 days and \$6,000 per day thereafter.
 - f. For failure to submit the Final Remedy Construction Completion Report as scheduled in Section VI.17: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
 - g. For failure to submit the Current Conditions Report required in Section VI.15 within 60 days after the effective date of the Order: \$500 per day for the first 14 days and \$1,000 per day thereafter.
28. Whether or not Keystone has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Keystone complies. Stipulated penalties will not accrue under subparagraphs 29(b) and © above until U.S. EPA notifies Keystone in writing of any deficiency in the demonstrations required under paragraph 16, above. Stipulated penalties will accrue simultaneously for separate violations of this Order.
29. Keystone must pay all penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand for payment of the penalties, unless Keystone invokes the dispute resolution procedures under Section X. A written demand will describe the violation and will indicate the amount of penalties due.
30. Interest will begin to accrue on any unpaid stipulated penalty balance 31 days after Keystone receives U.S. EPA's demand letter. Interest will accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, Keystone must pay a penalty of six percent a year on any unpaid principal more than 90 days overdue.
31. Keystone must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and must remit them to:

U.S. Department of the Treasury
Attention: U.S. EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673.

32. All such checks must reference the name of the facility, Keystone's name and address, and the U.S. EPA docket number of this action. Keystone must send copies of all checks and letters forwarding the checks simultaneously to the U.S. EPA Project Coordinator.
33. Keystone may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Keystone will pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision or agreement. Keystone will submit such payment to U.S. EPA within 30 days of receiving the resolution according to the payment instructions of this Section.
34. Neither invoking dispute resolution nor paying of penalties will alter in any way Keystone's obligation to comply with the terms of this Order not directly in dispute.
35. The stipulated penalties set forth in this section do not preclude U.S. EPA from pursuing any other remedies or sanctions for Keystone's violation of any term of this Order. However, U.S. EPA will not seek both a stipulated penalty under this section and a statutory penalty for the same violation.

X. DISPUTE RESOLUTION

36. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.
 - a. If either party disagrees, in whole or in part, with any decision made or action taken pursuant to this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.
 - b. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by objecting in writing. A written objection must set forth the specific points of the dispute, the basis for that party's position, and any matters which it considers necessary for determination.
 - c. U.S. EPA and Keystone will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may

request a conference with appropriate senior management to discuss the dispute.

- d. If the parties do not resolve the dispute through formal negotiations, within 14 business days after any formal negotiations have concluded, Keystone and U.S. EPA's Project Manager may submit additional written information to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation, submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, U.S. EPA will respond to Keystone's arguments and evidence and provide Keystone its detailed written decision on the dispute signed by the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5 ("EPA Dispute Decision").
- e. Disputes over final Corrective Measures - Any U.S. EPA Dispute Decision regarding final Corrective Measures will not be considered final agency action for purposes of Keystone initiating judicial review. However, if U.S. EPA takes any enforcement action regarding an EPA Dispute Decision, Keystone may assert all arguments or defenses available to it.

XI. FORCE MAJEURE AND EXCUSABLE DELAY

- 37. "Force majeure," for purposes of this Order, is any event arising from causes unforeseen and beyond the control of Keystone that delays or prevents the timely performance of any obligation under this Order despite its best efforts.
- 38. If any event occurs or has occurred that may delay performing any obligation under this Order, whether or not caused by a force majeure event, Keystone must notify U.S. EPA within two business days after learning that the event may cause a delay. If Keystone wishes to assert force majeure, Keystone must provide to U.S. EPA in writing all relevant information relating to its assertion, including its proposed revised schedule.
- 39. If U.S. EPA determines that a delay or anticipated delay constitutes force majeure, U.S. EPA must extend in writing the time to perform the obligation that is affected by the force majeure event for the period that U.S. EPA determines is necessary to complete the obligation.

XII. MODIFICATION

40. The parties may modify this Order by mutual agreement, except as provided for in Section VI. Any agreed modifications must be in writing, signed by both parties, state an effective date as the date signed by U.S. EPA, and will be incorporated into this Order.

XIII. RESERVATION OF RIGHTS

41. U.S. EPA reserves all rights granted to it by law and statutory authority, including the assessment of penalties and pursuit of an injunction to enforce the terms of this Order under section 3008(h)(2), 42 U.S.C. § 6928(h)(2). This Order is not a covenant not to sue, release, waiver or limitation of U.S. EPA's rights.
42. U.S. EPA reserves all rights to perform any portion of the work described in this Order and any additional site characterization, feasibility studies, and remedial work as it deems necessary to protect human health and the environment.
43. If U.S. EPA determines that Keystone's actions under this Order have caused or may cause: a) a release of hazardous waste or hazardous constituents, or b) a threat to human health or the environment, or c) that Keystone is not capable of undertaking any of the work ordered, U.S. EPA may order Keystone to cease its actions under the Order for as long as U.S. EPA determines necessary to abate any release or threat and to undertake any action which U.S. EPA determines necessary to abate such release or threat.
44. While U.S. EPA may review and comment on documents not required by this Order and prepared by Keystone, U.S. EPA has no obligation to do so and any comments made informally will not relieve Keystone of its obligation to achieve the required cleanup or performance standards or to obtain any necessary permits.
45. Keystone does not admit any of the factual or legal determinations made by the U.S. EPA. Except for the specific waivers contained in this Order, Keystone reserves all of its rights: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. Keystone enters into this Order in good faith without trial or adjudication of any issue of fact or law. Keystone reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the terms of this Order or to collect penalties for violations of the Order.

46. In any subsequent administrative or judicial proceeding initiated by the United States to compel or enjoin any activity at the facility, Keystone may not assert the contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XIV. OTHER CLAIMS

47. Nothing in this Order constitutes a release from any liability to third persons relating to Keystone's obligations under this Order. Keystone waives any claims or demands for compensation or payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, 9612, against the United States or the Hazardous Substance Superfund for any expense incurred pursuant to this Order. Additionally, this Order is not any decision on preauthorization of funds under §111(a)(2) of CERCLA.

XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

48. Keystone indemnifies, saves and holds harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Keystone or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification does not affect or limit the rights or obligations of Keystone or the United States under their various contracts.

XVI. SEVERABILITY

49. If any judicial or administrative authority invalidates any provision of this Order, the balance of the Order will remain effective with regard to Keystone and any third parties affected.

XVII. TERMINATION AND SATISFACTION

50. Keystone may request that U.S. EPA issue a determination that the requirements of the Order have been met for all or a portion of the facility. Keystone may also request that U.S. EPA issue a no further interest or no further action determination for all or a portion of the facility.
51. Upon U.S. EPA's satisfaction that Keystone has discharged all its obligations under the Order, Keystone and U.S. EPA may execute an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights", consistent with U.S. EPA's Model Scope of Work.

52. Keystone's execution of the acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA's reservation of rights stated in Section XIII.

XVIII. EFFECTIVE DATE

53. The effective date of this Order will be the date U.S. EPA has signed the Order. 42 U.S.C. §§ 6901-6992k

IT IS SO AGREED:

DATE:

11/20/00

BY:

Russ R. Perry
Russ R. Perry, Manager
Environmental Engineering
Keystone Steel & Wire CO.

IT IS SO ORDERED:

DATE:

December 19, 2000

BY:

Joseph M. Boyle
Joseph M. Boyle, Chief
Enforcement & Compliance
Assurance Branch
Waste, Pesticides and Toxics
Division

U.S. Environmental Protection Agency
Region 5